

ORIGINAL



0000013202

BEFORE THE ARIZONA CORPORATION COMMISSION

25FD

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

2004 NOV 15 A 9:05

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

NOV 15 2004

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY

CM

IN THE MATTER OF QWEST CORPORATION'S
PERFORMANCE ASSURANCE PLAN.

DOCKET NO. T-01051B-03-0859

PROCEDURAL ORDER

BY THE COMMISSION:

On June 5, 2002, in Decision No. 64888, as part of the Section 271 approval process, the Arizona Corporation Commission ("Commission") approved Qwest's Corporation's ("Qwest") Performance Assurance Plan ("QPAP"). The QPAP is Exhibit K to Qwest's Statement of Generally Available Terms and Conditions ("SGAT"). The QPAP provides an incentive for Qwest to continue to provide adequate service to wholesale customers following its Section 271 approval. The QPAP became effective when Qwest received Section 271 authorization from the Federal Communication Commission ("FCC") on December 15, 2003.

Section 16.0 of the QPAP provides for a six-month review of the Plan. By Procedural Order dated June 18, 2004, the Commission granted the Utilities Division Staff's ("Staff") request to establish a process for garnering the comments of interested parties on the scope of the six-month review proceeding and other related issues. Pursuant to the June 18, 2004 Procedural Order, Qwest, MCI metro Access Transmission Services LLC ("MCI") and Eschelon Telecom, Inc. ("Eschelon") filed comments.

On July 30, 2004, Staff filed a Response to the Parties' Comments Regarding the Scope of the 6-Month Review, and noted that there was disagreement amongst the parties concerning the scope of the review. On August 6, 2004, Staff filed a Supplement to its July 30, 2004 filing, providing further description and analysis of the parties' positions and setting forth a list of unresolved issues for discussion.

1 Pursuant to Procedural Order dated August 5, 2004, the Commission convened a Procedural
2 Conference on August 24, 2004, to discuss how to proceed in this matter. Staff, Qwest, MCI,
3 Eschelon and Covad participated. Prior to the Procedural Conference, Qwest circulated a matrix of
4 the issues that had been raised. At the August 24, 2004 Procedural Conference, the consensus was
5 that it would be beneficial to the process if the parties tried to resolve consensually the issues that had
6 been identified in the matrix. The parties suggested a status conference in approximately 30 days. By
7 Procedural Order dated August 25, 2004, the Commission ordered the parties to file an updated Joint
8 Matrix of Unresolved Issues by September 24, 2004, and scheduled a Procedural Conference for the
9 purpose of establishing a procedure for resolving the remaining unresolved issues.

10 On September 23, 2004, the parties requested an additional 30 days to allow them to continue
11 discussions and further narrow the issues. By Procedural Order dated September 24, 2004, the
12 Commission ordered the parties to file a Joint Matrix of Unresolved Issues by October 25, 2004, and
13 scheduled a Procedural Conference on October 29, 2004.

14 On October 26, 2004, the parties requested that the matter be continued several days to
15 accommodate travel schedules. By Procedural Order dated October 27, 2004, the Procedural
16 Conference was continued until November 3, 2004.

17 On November 1, 2004, MCI, Eschelon, AT&T, Covad, Staff and Qwest filed a Stipulation
18 which indicated that they had resolved all but one of the outstanding issues. Attached to the
19 Stipulation were the Joint Matrix of Arizona issues and the Stipulation that the parties filed in a
20 similar proceeding in Washington. Issues numbers 2, 3, 4, 7 and 9 in the Joint Matrix had been
21 pending resolution in Washington at the time the Matrix was filed in Arizona. The Stipulating Parties
22 agree to resolve the Arizona issues in the same manner as contained in the Washington Stipulation.
23 The Arizona Stipulation also resolves issues concerning OP-5, New Service Quality; PO-2,
24 Electronic Flow-Through and BI-5, Billing Claims Adjustments; QPAP Modifications pending from
25 the May 3, 2004, SGAT Exhibit B filing; and Staff's requests concerning information about Tier II
26 payments and about CLECs which had not opted into the QPAP.

27 The one issue the parties could not resolve was how Performance Indicator Definition ("PID")
28 modifications would be made outside the six-month review process. Heretofore, Qwest and the

1 CLECs had addressed changes in a forum known as the Long Term PID Administration ("LTPA")
2 process. Qwest determined to withdraw from that process, and has proposed an alternative process
3 that addresses issues on a carrier-by-carrier basis. Staff and the CLECs question whether Qwest has
4 the right to unilaterally withdraw from the LTPA process. Qwest argues that the LTPA was an *ad*
5 *hoc* process that was never mandated by the Commission, or any other authority. Staff argues that
6 the LTPA process was a critical component of, and relied upon by, the Commission in its
7 deliberations on the QPAP and Section 271.

8 The parties agree that the Commission can proceed with its consideration of whether to
9 approve the stipulated resolution of the issues affecting the QPAP and the PIDs (Exhibit B to the
10 SGAT) independently of resolving the dispute concerning the LTPA process. The Stipulation
11 provides that Qwest will file revised SGAT Exhibits K and B by November 12, 2004. Qwest stated
12 at the November 3, 2004, Procedural Conference that after it files Exhibits K and B, parties should
13 then have an opportunity to file comments on the revisions to ensure that they reflect the terms of
14 their agreement. Following the submission of comments, the Hearing Division would submit a
15 Recommended Order to the Commission concerning the Stipulation.

16 The parties differ somewhat on how to proceed with deliberations on the appropriate process
17 for PID modifications between six-month reviews. Staff and the CLECs proposed that Qwest file a
18 copy of its proposed revised procedure and that the parties then be given an opportunity to file
19 comments on the proposal. Qwest believes that all parties should file simultaneous comments on
20 their recommendations for the appropriate process. Regardless of which party files first, there is
21 agreement that there should be an opportunity to file reply comments. Furthermore, Qwest believes
22 that there are several legal issues involved that would merit the filing of briefs.

23 The LTPA process was employed as a means to discuss changes to the PIDs outside the six
24 month QPAP review. At some point Qwest determined that it would no longer participate in the
25 LTPA and posted a new process for discussing changes on its website. Qwest's new procedures
26 appear to be the only alternative to the LTPA that have been proposed to date. Because Qwest is
27 proposing a change to what has heretofore been the status quo, Qwest should file the first round of
28 testimony in support of its proposed process for addressing PID modifications. Staff and other

interested parties should then file responsive testimony, and Qwest would then have an opportunity to file rebuttal testimony.

Many of the same parties to this docket are also involved in the docket to consider Qwest's Revised Price Cap Plan (T-01051B-03-0454 et al.), which is set for hearing to commence in February. To help avoid conflicts and over extending resources, the parties should file a proposed schedule for filing testimony, briefs, and a recommendation concerning the need for a hearing.

IT IS THEREFORE ORDERED that Qwest shall file its SGAT Exhibits K and B that reflect the terms of the Stipulation no later than November 19, 2004.

IT IS FURTHER ORDERED that interested parties shall file comments to the revised Exhibits K and B by December 3, 2004, and shall include an assessment of whether Qwest's filing complies with the terms of the Stipulation.

IT IS FURTHER ORDERED that the parties shall file their recommended process and a schedule for the resolution of the LTPA process by December 10, 2004.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 15th day of November, 2004.


JANE L. RODDA
ADMINISTRATIVE LAW JUDGE

Copy of the foregoing mailed/delivered this 15th day of November, 2004, to:

QWEST CORPORATION
1801 CALIFORNIA STREET, #5100
DENVER CO 80202

MAUREEN ARNORLD
U S WEST COMMUNICATIONS, INC.
3033 N. THIRD STREET, ROOM 1010
PHOENIX AZ 85012

MICHAEL M. GRANT
GALLGHER AND KENNEDY
2575 E CAMELBACK RD
PHOENIX AZ 85016-9225

TIMOTHY BERG
FENNEMORE CRAIG
3003 N. CENTRAL AVE., SUITE 2600
PHOENIX AZ 85016

MARK DIOGUARDI
TIFFANY AND BOSCO PA
500 DIAL TOWER
1850 N. CENTRAL AVENUE
PHOENIX AZ 85004

JEFF CROCKETT
SNELL & WILMER
ONE ARIZONA CENTER
PHOENIX AZ 85004-0001

DARREN S WEINGARD STEPHEN H KUKTA
SPRINT COMMUNICATIONS CO LP
1850 GATEWAY DRIVE 7TH FLOOR
SAN MATEO CA 94404-2467

THOMAS H. CAMPBELL
LEWIS & ROCA
40 N. CENTRAL AVE.
PHOENIX AZ 85007

ANDREW O. ISAR
TRI
4312 92ND AVENUE, N.W.
GIG HARBOR WA 98335

RICHARD M RINDLER MORTON J POSNER
SWIDLER & BERLIN
3000 K STREET NW STE 300
WASHINGTON DC 20007

MICHAEL PATTEN
ROSHKA, HEYMAN & DEWULF
ONE ARIZONA CENTER
400 E. VAN BUREN SUITE 800
PHOENIX AZ 85004-3906

KAREN L CLAUSON THOMAS F DIXON
MCI TELECOMMUNICATIONS CORP
707 17TH STREET #3900
DENVER CO 80202

RICHARD W WOLTERS
AT&T & TCG
1875 LAWRENCE STREET STE 1575
DENVER CO 80202

JOYCE HUNDLEY
UNITED STATES DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
1401 H STREET NW STE 8000
WASHINGTON DC 20530

JOAN BURKE
OSBORN MALEDON
2929 N CENTRAL AVE 21ST FLOOR
PO BOX 36379
PHOENIX AZ 85067-6379

SCOTT S WAKEFIELD
RUCO
1110 W. WASHINGTON, STE. 220
PHOENIX AZ 85007

GREGORY HOFFMAN
AT&T
759 FOLSOM STREET, ROM 2159
SAN FRANCISCO AZ 94107-1243

DANIEL WAGGONER
DAVIS WRIGHT TREMAINE
2600 CENTURY SQUARE
1501 FOURTH AVE
SEATTLE WA 98101-1688

RAYMOND S. HEYMAN RANDALL H. WARNER
ROSHKA HEYMAN & DEWULF
ONE ARIZONA CENTER
400 E VAN BUREN SUITE 800
PHOENIX AZ 85004

JIM SCHELTEMA
BLUMENFELD & COHEN
1655 MASSACHUSETTS AVE. SUITE 300
WASHINGTON DC 20036

DIANE BACON
LEGISLATIVE DIRECTOR
COMMUNICATIONS WORKERS OF AMERICA
5818 N 7TH ST STE 206
PHOENIX AZ 85014-5811

JEFFREY CROCKET
SNELL & WILMER
ONE ARIZONA CENTER
PHOENIX AZ 85004

MARK N ROGERS
EXCELL AGENT SERVICES LLC
P.O. Box 52092
PHOENIX AZ 85072-2092

MARK P TRINCHERO
DAVIS WRIGHT TREMAINE LLP
1300 S.W. FIFTH AVE STE 2300
PORTLAND OR 97201

MARK DiNUNZIO
COX ARIZONA TELCOM, LLC
20401 N. 29th Avenue, Suite 100
PHOENIX AZ 85027

JON LOEHMAN
MANAGING DIRECTOR-REGULATORY
SBC TELECOM INC
300 CONVENT STREET, STE. 1900
SAN ANTONIO TX 78205-3717

ANDREA P HARRIS
SENIOR MANAGER, REGULATORY
ALLEGIANCE TELECOM, INC.
PO BOX 2610
DUBLIN CA 94568

KAREN CLAUSON
ESCHELON TELECOM INC
730 N 2ND AVE S., SUITE 1200
MINEAPOLIS MN 55402

TODD C WILEY
GALLAGHER & KENNEDY
2575 E CAMELBACK RD
PHOENIX AZ 85016-9225

HARRY L. PLISKIN
COVAD COMMUNICATIONS CO
7901 LOWRY BLVD
DENVER CO 80230

BRIAN THOMAS
TIME WARNER TELECOM, INC.
520 S W 6TH AVE, SUITE 300
PORTLAND OR 97204

JON POSTON
ACTS
6733 E DALE LANE
CAVE CREEK ARIZONA 85331-6561

JACQUELINE MANOGIAN
MOUNTAIN TELECOMMUNICATIONS, INC.
1430 W. BROADWAY ROAD, STE. A200
TEMPE AZ 85282

1 KIMBERLY M. KIRBY
DAVIS DIXON KIRBY LLP
19200 VON KARMAN AVENUE, STE. 600
2 IRVINE CA 92612

3 CYNTHIA A. MITCHELL
1470 WALNUT STREET, STE. 200
BOULDER CO 80302

4 PETER S. SPIVACK
HOGAN & HARTSON, LLP
5 555 13TH STREET, N.W.
WASHINGTON DC 20004-1109

6 MARTHA RUSSO
HOGAN & HARTSON, LLP
555 13TH STREET, N.W.
7 WASHINGTON DC 20004-1109

8 DOUGLAS R. M. NIZARIAN
HOGAN & HARTSON, LLP
555 13TH STREET, NW
9 WASHINGTON DC 20004-1109

10 TOBIN ROSEN
PRINCIPAL ASSISTANT CITY ATTORNEY
OFFICE OF THE TUCSON CITY ATTORNEY
11 255 W. ALEMEDA - 7TH FLOOR
TUCSON AZ 85701

12 PATRICK A. CLISHAM
AT&T ARIZONA STATE DIRECTOR
13 320 E. BROADMOOR COURT
PHOENIX AZ 85022

14 MOUNTAIN TELECOMMUNICATIONS, INC.
1430 W. BROADWAY ROAD, STE. A200
15 TEMPE AZ 85282

16 MITCHELL F. BRECHER
GREENBERG TRAURIG, LLO
800 CONNECTICUT AVENUE NW
WASHINGTON DC 20006

17 RICHARD S. WOTERS
AT&T
18 1875 LAWRENCE STREET, TOOM 1575
DENVER CO 80202-1847

19 MARY E. STEELE
DAVIS WRIGHT TREMAINE
20 2600 CENTURY SQUARE
1501 FOURTH AVENUE
21 SEATTLE WA 98101-1688

22 MARTI ALLBRIGHT
MPOWER COMMUNICATIONS
5711 S. BENTON CIRCLE
23 LITTLETON CO 80123

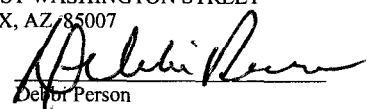
24 MARTIN A. ARONSON
MORRILL & ARONSON
ONE E. CAMELBACK ROAD, STE. 340
25 PHOENIX AZ 85012-1648

26 PATRICK A. CLISHAM
AT&T ARIZONA STATE DIRECTOR
320 E. BROADMOOR COURT
27 PHOENIX AZ 85022

ERNEST G. JOHNSON, DIRECTOR
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION
1200 WEST WASHINGTON STREET
PHOENIX, AZ 85007

CHRISTOPHER KEMPLEY, CHIEF COUNSEL
LEGAL DIVISION
ARIZONA CORPORATION COMMISSION
1200 WEST WASHINGTON STREET
PHOENIX, AZ 85007

By:


Deborah Person

Secretary to Jane Rodda